

**EXHIBIT D**  
**SPECIAL TERMS AND CONDITIONS**

- A. **LAW GOVERNING.** It is understood and agreed that this Contract shall be governed by the laws of the State of California both as to interpretation and performance.
- B. **CONTRACT MANAGER.** State may change the State Contract Manager by written notice given to the Contractor at any time.
- C. **SUBCONTRACTS.** Except for subcontracts identified in the proposal in accordance with the Request for Proposal or Invitation for bid, Contractor shall submit any subcontracts which are proposed to be entered into in connection with this Contract to the State for its prior written approval before entering into the same. No work shall be subcontracted without the prior written approval of the State. Upon the termination of any subcontract, State shall be notified immediately. Any subcontract shall include all the terms and conditions of this Contract and its attachments, in addition to any other relevant terms and conditions.
- D. **PUBLICATIONS AND REPORTS.** Unless otherwise provided for in the Contract, Contractor shall:
1. Incorporate any comments or revisions required by the State into any publication or report and shall not publish any material until it receives final State approval.
  2. Furnish two copies of each publication and report required plus one reproducible original.
  3. Illustrations, maps and graphs in summaries and publications and reports shall be developed in a manner which allows the complete illustration to be contained on a single 8-1/2 by 11 page unless specific written approval is given to the contrary.
  4. Graphs, illustrations and printed materials shall be printed in a single color throughout each publication unless prior State approval is granted.
  5. Contractor's name shall appear only on the cover and title page of publications and reports and summaries. Covers and title pages will read as follows:

**DEPARTMENT OF MENTAL HEALTH**  
**TITLE**  
**By (APS Healthcare Midwest)**

6. The State reserves the right to use and reproduce all publications and reports and data produced and delivered pursuant to this Contract, and reserves the right to use and reproduce such materials.
7. If the publication and/or report is prepared by nonemployees of the Department, it shall contain the numbers and dollar amounts of all contracts and subcontracts relating to the preparation of the report in a separate section of the report (Government Code Section 7550).

- E. **PROGRESS REPORTS.** Except as otherwise specified by the State, Contractor shall provide a progress report in writing, or orally if approved by the State Contract Manager, at least once a month to Contract Manager. This progress report shall include, but not be limited to, a statement that the Contractor is or is not on schedule, any pertinent reports, or interim findings. Contractor shall cooperate with and be available to meet with State representatives to discuss any difficulties, or special problems, so that solutions or remedies can be developed as soon as possible.
- F. **PRESENTATION.** Upon request, Contractor shall meet with the State to present any findings, conclusions and recommendations required by the Contract for approval. If set forth in the Contract, Contractor shall submit a comprehensive final report for approval. Both the final meeting and the final report must be completed on or before the date indicated in the Contract.
- G. **REPORT AND INVOICE DELIVERY.** All reports, or other communications and invoices, are to be delivered to the Contract Manager, Department of Mental Health, 1600 9<sup>th</sup> Street, Sacramento, California, 95814 or other location designated by the Contract Manager.
- H. **REQUIRED PAYMENT DATE.** Unless otherwise specified, payment will be made in accordance with Government Code, Section 927 et sec., as applicable. Payment shall not be due until the later of: (a) the date of acceptance of goods or performance of services or (b) receipt of an accurate invoice.
- I. **FISCAL RECORDS.** Contractor shall furnish detailed itemization of and retain all records relating to direct expenses reimbursed and to hours of employment in performance of this Contract by any employee of Contractor for which the State is billed. In addition, Contractor shall establish accounting procedures subject to State approval--or the State shall approve existing procedures--and the Contractor shall maintain for at least three years books, papers, records, documents, and other evidence sufficient to determine the costs and hours spent fulfilling the terms of this Contract and related incidental tasks. Contractor shall allow State representatives to review any of these materials.
- J. **DEPARTMENT OF MENTAL HEALTH STAFF.** Department of Mental Health staff will be permitted to work side by side with Contractor's staff to the extent and under conditions that may be directed by the Contract Manager. In this connection, Department of Mental Health staff will be given access to all data, working papers, etc., which Contractor may seek to utilize.
- K. **CONFIDENTIALITY OF DATA AND DOCUMENTS.**
  - 1. Contractor will not disclose data or documents or disseminate the contents of the final or any preliminary report without express permission of the Contract Manager.

2. Permission to disclose information or documents on one occasion or at public hearings held by the Department of Mental Health relating to the same shall not authorize Contractor to further disclose such information or documents on any other occasion.
3. Contractor will not comment publicly to the press or any other media regarding the data or documents generated, collected, or produced in connection with this contract, or the Department of Mental Health's actions on the same, except to the Department of Mental Health staff, Contractor's own personnel involved in the performance of this Contract, at a public hearing, or in response to questions from a legislative committee.
4. If requested by State, Contractor shall require each of its employees or officers who will be involved in the performance of this Contract to agree to the above terms in a form to be approved by State and shall supply State with evidence thereof.
6. Each subcontract shall contain the foregoing provisions related to the confidentiality of data and nondisclosure of the same.
7. After any data or documents submitted has become a part of the public records of the State, Contractor may, if it wishes to do so, at its own expense and upon approval by the Contract Manager, publish or utilize the same but shall include the following legend:

#### LEGAL NOTICE

This report was prepared as an account of work sponsored by the Department of Mental Health, but does not necessarily represent the views of the Department or any of its employees except to the extent, if any, that it has formally been approved by the Department. For information regarding any such action, communicate directly with the Department at P.O. Box 952050, Sacramento, California, 94252-2050. Neither said Department nor the State of California, nor any officer or employee thereof, or any of its contractors or subcontractors makes any warranty, express or implied, or assumes any legal liability whatsoever for the contents of this document. Nor does any party represent that use of the data contained herein would not infringe upon privately owned rights without obtaining permission or authorization from any party who has any rights in connection with the data.

#### L. PROVISIONS RELATING TO DATA.

1. "Data" as used in this Contract means recorded information, regardless of form or characteristics, of a scientific or technical nature. It may, for example, document research, experimental, developmental or engineering work; or be usable or be used to define a design or process; or support a premise or conclusion asserted in any deliverable document called for by this Contract. The data may be graphic or pictorial delineations in media, such as drawings or photographs, charts, tables, mathematical modes, collections or extrapolations of data or information, etc. It may be in machine form, as punched cards, magnetic tape, computer printouts, or may be retained in computer memory.

2. "Proprietary data" is such data as the Contractor has identified in a satisfactory manner as being under Contractor's control prior to commencement of performance of this Contract and which has been reasonably demonstrated as being of a proprietary force and effect at the time this Contract is commenced.
  3. "Generated data" is that data which a Contractor has collected, collated, recorded, deduced, read out or postulated for utilization in the performance of this Contract. Any electronic data processing program, model or software system developed or substantially modified by the Contractor in the performance of this Contract at State expense, together with complete documentation thereof, shall be treated in the same manner as generated data.
  4. "Deliverable data" is that data which under terms of this Contract is required to be delivered to the State. Such data shall be property of the State.
  5. "Generated data" shall be the property of the State unless and only to the extent that it is specifically provided otherwise herein.
  6. The title to Contractor's proprietary data shall remain in the Contractor's possession throughout the term of this Contract and thereafter. As to generated data which is reserved to the Contractor by express terms of this Contract and as to any preexisting or proprietary data which has been utilized to support any premise, postulate or conclusion referred to or expressed in any deliverable hereunder, Contractor shall preserve the same in a form which may be introduced in evidence in a court of competent jurisdiction at Contractor's own expense for a period of not less than three years after receipt by the State of the final report or termination of this Contract and any and all amendments hereto, or for three years after the conclusion or resolution of any and all audits or litigation relevant to this Contract, whichever is later.
  7. Prior to the expiration of such time and before changing the form of or destroying any such data, Contractor shall notify State of any such contemplated action; and State may within 30 days after said notification determine whether it desires said data to be further preserved and, if State so elects, the expense of further preserving said data shall be paid for by the state. Contractor agrees that State shall have unrestricted reasonable access to the same during said three-year period and throughout the time during which said data is preserved in accordance with this Contract, and Contractor agrees to use best efforts to furnish competent witnesses or to identify such competent witnesses to testify in any court of law regarding said data.
- M. **CHANGES IN TIME FOR PERFORMANCE OF TASKS.** The time for performance of the tasks and items within the budget, but not the total contract price, may be changed with the prior written approval of the Contract Manager. However, the date for completion of performance and the total contract price, as well as all other terms not specifically accepted may be altered only by formal amendment of this Contract.

- N. APPROVAL OF PRODUCT. Each product to be approved under this Contract shall be approved by the Contract Manager. The State's determination as to satisfactory work shall be final absent fraud, mistake or arbitrariness.
- O. SUBSTITUTIONS. Contractor shall notify the DMH Contract Manager of any substitutions of its key personnel as indicated in its proposal.
- P. NOTICE. Notice to either party may be given by first class mail properly addressed, postage fully prepaid, to the address beneath the name of each respective party. Such notice shall be effective when received as indicated by post office records or if deemed undeliverable by post office, such notice shall be effective nevertheless 15 days after mailing. Alternatively, notice may be given by personal delivery by any means whatsoever to the party, and such notice shall be deemed effective when delivered.
- Q. WAIVER. No waiver of any breach of this Contract shall be held to be a waiver of any other or subsequent breach. All remedies afforded in this Contract shall be taken and construed as cumulative; that is, in addition to every other remedy provided therein or by law. The failure of State to enforce at any time the provisions of this Contract, or to require at any time performance by the Contractor of any of the provisions, shall in no way be construed to be a waiver of such provisions not to affect the validity of this Contract or the right of State to enforce said provisions.
- R. GRATUITIES AND CONTINGENCY FEES. The State, by written notice to the Contractor, may terminate the right of Contractor to proceed under this Contract if it is found, after notice and hearing by the State, that gratuities were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the State with a view toward securing a contract or securing favorable treatment with respect to the awarding, amending, or performing of such contract, provided that the existence of the facts upon which the State makes such findings that shall be an issue may be reviewed in any competent court.

In the event this Contract is terminated as provided in the paragraph above, State shall be entitled (a) to pursue the same remedies against Contractor as it could pursue in the event of the breach of the Contract by the Contractor, and (b) as a predetermined amount of liquidated damages in addition to any other damages to which it may be entitled by law, to exemplary damages in an amount which shall be not less than three times the cost incurred by the Contractor in providing any such gratuities to any such officer or employee.

The rights and remedies of the State provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

The Contractor warrants by execution of this Contract that no person or selling agency has been employed or retained to solicit or secure this Contract upon an Contract or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees of Contractor, for the purpose of securing business. For breach or violation of this warranty, the State shall have the right to annul this Contract without liability, paying only for the values of the work actually returned, or in its discretion to deduct from the

contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

- S. **INSURANCE.** Contractor hereby warrants that it carries and shall maintain in full force and effect during the full term of this contract and any extensions to said term:

Sufficient and adequate Worker's Compensation Insurance for all of its employees who will be engaged in the performance of this Contract and agrees to furnish to State satisfactory evidence thereof at any time the State may request the same; and

Sufficient and adequate Liability Insurance to cover any and all potential liabilities and agrees to furnish to State satisfactory evidence thereof upon request by State.

- T. **PAYMENTS INCLUDE TAXES.** Payments to be made to Contractor as specified herein shall include all taxes of any description—Federal, State and municipal—assessed against Contractor by reason of this Contract. Pursuant to California Revenue and Taxation Code Section 18806.1, independent contractors may be subject to one percent (1%) State Income Tax withholding.
- U. **CONTRACT IS COMPLETE.** Other than as specified herein, no document or communication passing between the parties hereto shall be deemed a part of this Contract.
- V. **CAPTIONS.** The clause headings appearing in this Contract have been inserted for the purpose of convenience and ready reference. They do no purport to and shall not be deemed to define, limit or extend the scope or intent of the clauses to which they pertain.
- W. **PUBLIC HEARINGS.** If public hearings on the subject matter dealt with in this Contract are held within one year from the contract expiration date. Contractor will make available to testify the personnel assigned to this Contract at the hourly rates specified in the Contractor's proposed budget. State will reimburse Contractor for travel of said personnel at the contract rates for such testimony as may be requested by State.
- X. **EQUAL EMPLOYMENT OPPORTUNITY.** If this Contract provides for payment in excess of \$10,000 during the performance of this Contract, the Contractor agrees to comply with the provisions of Executive Order 11246 entitled "Equal Employment Opportunity" as amended by Executive Order 11375 and as supplemented in Department of Labor regulations. (41 CFR Part 60)
- Y. **DVBE.** Unless waived by the Department of Mental Health, Contractor shall comply with the Disabled Veteran Business Enterprises participation goal in accordance with the provisions of Public Contract Code Section 10115 et seq.
- Z. **FORCE MAJEURE.** Neither the State nor the Contractor shall be deemed to be in default in the performance of the terms of this Contract if either party is prevented from performing the terms of this Contract by causes beyond its control, including without being limited to: acts of God, interference, rulings or decision by municipal, Federal, State or other governmental agencies, boards or commissions; any laws and/or regulations of such municipal, State,

Federal, or other governmental bodies; or any catastrophe resulting from flood, fire, explosion, or other causes beyond the control of the defaulting party. If any of the stated contingencies occur, the party delayed by force majeure shall immediately give the other parties written notice of the cause of delay. The party delayed by force majeure shall use reasonable diligence to correct the cause of the delay, if correctable, and if the condition that caused the delay is corrected, the party delayed shall immediately give the other parties written notice thereof and shall resume performance under this Contract.

**AA.PERMITS AND LICENSES.** The Contractor shall procure and keep in full force and effect during the term of this Contract all permits, registrations and licenses necessary to accomplish the work specified in this Contract, and give all notices necessary and incident to the lawful prosecution of the work.

The Contractor shall keep informed of, observe, comply with, and cause all of its agents and employees to observe and comply with all prevailing Federal, State, and local laws, and rules and regulations made pursuant to said Federal, State, and local laws, which in any way affect the conduct of the work of this Contract. If any conflict arises between provisions of the plans and specifications and any such law above referred to, then the Contractor shall immediately notify the State in writing.

**BB.LITIGATION.** The State, promptly after receiving notice thereof, shall notify the Contractor in writing of the commencement of any claim, suit, or action against the State or its officers or employees for which the contractor must provide indemnification under this Contract. The failure of the State to give such notice, information, authorization or assistance shall not relieve the Contractor of its indemnification obligations. The Contractor shall immediately notify the State of any claim or action against it which affects, or may affect, this Contract, the terms and conditions hereunder, or the State, and shall take such action with respect to said claim or action which is consistent with the terms of this Contract and the interest of the State.

**CC.SEVERABILITY.** If any provision of this Contract is held invalid by a court of competent jurisdiction, such invalidity shall not affect any other provision of this Contract and remainder of this Contract shall remain in full force and effect. Therefore, the provisions of this Contract are and shall be deemed to be severable.

**DD.BUDGET DISCLAIMER.** If this Contract overlaps State fiscal years, should funds not be appropriated by the Legislature for the fiscal year(s) following that during which this Contract was executed, the State may exercise its option to cancel this Contract or reduce funding and make appropriate line item changes upon providing reasonable notice thereof.

If this Contract overlaps Federal and State fiscal years, should funds not be appropriated by Congress and approved by the Legislature for the fiscal year(s) following that during which this Contract was executed, the State may exercise its option to cancel this Contract.

In addition, this Contract is subject to any additional restrictions, limitations, or conditions enacted by Congress or the Legislature which may affect the provisions or terms of funding of this Contract in any manner.

EE.DISPUTES. Contractor shall first discuss and attempt to resolve any dispute arising under or relating to the performance of this Contract, which is not disposed of by the Contract, informally with the DMH Contract Manager. If the dispute cannot be disposed of at this level, then the dispute shall be decided by the Department of Mental Health's Deputy Director, Administrative Services. All issues pertaining to this dispute shall be submitted in written statements and addressed to the Deputy Director of Administration, Department of Mental Health, 1600 9<sup>th</sup> Street, Room 150, Sacramento, California 95814. Such written notice must contain the Contract Number. The decision of the Deputy Director of Administrative Services shall be final and binding to all parties. Within ten days of receipt of the written grievance report from the Contractor, the Deputy Director of Administration shall make a determination on the problem, and shall respond in writing to the Contractor indicating the decision. Pending the final decision by the Deputy Director of Administration or his/her designee, the Contractor shall proceed diligently with the performance of the Contract. Neither the pendency of a dispute, nor its consideration by the Deputy Director of Administration, will excuse the Contractor from full and timely performance of the services required in accordance with the terms of the contract.

Notwithstanding any other provisions of this Contract, after recourse to the procedure set forth in the paragraph above, any controversy or claim arising out of or relating to this Contract or breach thereof shall be settled by arbitration at the election of either party in accordance with California Public Contract Code Section 10240 et seq., and judgment upon the award rendered by the arbitration may be entered in any court having jurisdiction thereof.

FF.PUBLIC CONTRACT CODE. Contractor is advised that provisions of Public Contract Code Sections 10355 through 10382 pertaining to the duties, obligations and rights of a consultant service contractor are applicable to this Contract.

GG.EVALUATION OF CONTRACTOR'S PERFORMANCE. The Contractor's performance under this Contract will be evaluated by the State after completion of the contract. A copy of the written evaluation will be maintained in the contract file and may be submitted to the Office of Legal Services, Department of General Services.

HH.TRAVEL. Contractor's headquarters for purposes of payment of travel shall be the city designated in the signature block unless otherwise specified in the contract.

For travel necessary to the performance of this Contract, Contractor shall make all reimbursements in accordance with, and shall not exceed the rates authorized by, the State Administrative Manual and the Policies and Procedures of the Department of Mental Health (DMH). All requests to exceed any base reimbursement rate established in the State Administrative Manual or the Policies and Procedures of DMH must be made and approved prior to the date of travel and must be submitted in writing to the State's Contract Manager.

II. PRIORITY HIRING CONSIDERATIONS FOR CONTRACTS EXCEEDING \$200,000. If the resulting contract will have a total contract value of \$200,000 or more, the contractor is hereby advised that it will be obligated to give priority consideration in filling vacancies in positions funded by the resulting contract to qualified recipients of aid under Welfare and



Institutions Code Section 11200. This requirement shall not interfere with or require a violation of a collective bargaining Contract, a federal affirmative action obligation for hiring disabled veterans of the Vietnam era, or nondiscrimination compliance laws of California and does not require the employment of unqualified recipients of aid.

JJ. TERMINATION. Either party may terminate this Contract by giving 30 days written notice to the other party. The notice of termination shall specify the effective date of termination.

Upon the Contractor's receipt of notice of termination from the State, and except as otherwise directed in the notice, the Contractor shall:

1. Stop work on the date specified in the notice.
2. Place no further orders or enter into any further subcontracts for materials, services or facilities except as necessary to complete work under the Contract up to effective date of termination.
3. Terminate all orders and subcontracts;
4. Promptly take all other reasonable and feasible steps to minimize any additional cost, loss, or expenditure associated with work terminated, including, but not limited to reasonable settlement of all outstanding liability and claims arising out of termination of orders and subcontracts;
5. Deliver or make available to DMH all data, drawings, specifications, reports, estimates, summaries, and such other information and materials as may have been accumulated by the Contractor under this Contract, whether completed, partially completed, or in progress.

In the event of termination, an equitable adjustment in the price provided for this Contract shall be made. Such adjustment shall include reasonable compensation for all services rendered, materials supplies, and expenses incurred pursuant to this Contract prior to the effective date of termination.

KK.CLIENT CONFIDENTIALITY.

1. For contract involving clients and information regarding clients, the Contractor shall protect from unauthorized disclosure, names and other identifying information concerning persons receiving services pursuant to this contract, except for statistical information not identifying any client. Client is defined as "those persons receiving services pursuant to a Department of Mental Health funded program." Contractor shall not use such identifying information for any purpose other than carrying out the Contractor's obligations under this contract.
2. Contractor shall promptly transmit to the State all requests for disclosure of such identifying information not emanating from the client.

3. Contractor shall not disclose, except as otherwise specifically permitted by this contract or authorized by the client, any such identifying information to anyone other than the State without prior written authorization from the State.
4. For purposes of this section, identity shall include but not be limited to name, identifying number, symbol or other identifying piece of information assigned to the individual, such as a finger or voice print or a photograph which can be used to identify the individual person.
5. The Contractor affirms that as the EQRO for the State of California, the Contractor is independent from the California Department of Health Services (“DHS”), the California Department of Mental Health (“DMH”), and from all Mental Health Plans (“MHPs”) serving Medi-Cal beneficiaries in California. The Contractor meets the requirements to qualify as “independent” affirms as the EQRO for the State of California that no present or known future direct or indirect financial relationships exist with any MHP in the State.
6. The Contractor operates multiple state funded public programs for Medicaid beneficiaries in seven states nationally. The Contractor demonstrates competence in the performance of EQRO activities, including development of performance measures and performance improvement plans; field-based audits on clinical and administrative procedures; detailed IT analysis and system administration; extensive consumer and stakeholder involvement and educational processes; comprehensive data collection, analysis and reporting; education and technical assistance; provider service reviews; and many other activities associated with continuous quality improvement and outcomes management.

## **EXHIBIT E ADDITIONAL PROVISIONS**

### **A. Competence**

By signing this contract, the Contractor assures that it shall continue to possess the competence required by Title 42, CFR, Section 438.354. In addition to the notice required by Exhibit D, Sections C and P, the Contractor shall provide reasonable notice to DMH of any changes in staffing, subcontractors, etc., that may affect the competence of the Contractor to perform external quality review duties under the contract. In most cases, reasonable notice shall be 15 working days prior to the change and in no case shall be later than three working days after the change.

### **B. Independence**

By signing this contract, the Contractor assures that it shall continue to possess the independence required by 42CFR438.354. In addition to the notice required by Exhibit D, Sections C and P, the Contractor shall provide reasonable notice to DMH of any changes in staffing, subcontractors, etc., that may affect the independence of the Contractor to perform external quality review duties under the contract. In most cases, reasonable notice shall be 15 working days prior to the change and in no case shall be later than three working days after the change.

### **C. Extension Years**

DMH shall notify the Contractor of its intent to exercise the option for an extension year at least six months prior to the termination date of the contract.

### **D. HIPAA Business Associate Provisions**

#### **1. Recitals**

- A. It has been determined that a business associate relationship exists between the Department of Mental Health (DMH) and the Contractor under the Health Insurance Portability and Accountability Act ("HIPAA") and its implementing privacy and security regulations at 45 CFR Parts 160 and 164 ("the HIPAA regulations:").
- B. DMH may wish to disclose to Business Associate certain information pursuant to the terms of this Contract, some of which may constitute Protected Health Information ("PHI").
- C. "Protected Health Information" or "PHI" means any information, whether oral or recorded in any form or medium that relates to the past, present, or future physical or mental condition of an individual, the provision of health and dental care to an individual, or the past, present, or future payment for the provision of health and

dental care to an individual; and that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual. PHI shall have the meaning given to such term under HIPAA and HIPAA regulations, as the same may be amended from time to time.

- D. Under this contract, Contractor is the Business Associate of DMH and provides services, arranges, performs or assists in the performance of functions or activities on behalf of DMH and uses or discloses PHI.
- E. DMH and Business Associate desire to protect the privacy and provide for the security of PHI disclosed pursuant to this Contract, in compliance with HIPAA and HIPAA regulations and other applicable laws.
- F. The purpose of these Provisions is to satisfy certain standards and requirements of HIPAA and the HIPAA regulations.
- G. The terms used in these Provisions, but not otherwise defined, shall have the same meanings as those terms in the HIPAA regulations.

In exchanging information pursuant to this contract, the parties agree as follows:

## **2. Permitted Uses and Disclosures of PHI by Business Associate**

- A. *Permitted Uses and Disclosures.* Except as otherwise indicated in these Provisions, Business Associate may use or disclose PHI only to perform functions, activities or services specified in this contract, for, or on behalf of DMH, provided that such use or disclosure would not violate the HIPAA regulations, if done by DMH.
- B. *Specific Use and Disclosure Provisions.* Except as otherwise indicated in these Provisions, Business Associate may:
  - (1) *Use and disclose for management and administration.* Use and disclose PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate, provided that disclosures are required by law, or the Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and will be used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware that the confidentiality of the information has been breached.
  - (2) *Provision of Data Aggregation Services.* Use PHI to provide data aggregation services to DMH. Data aggregation means the combining of PHI created or received by the Business Associate on behalf of DMH with PHI received by the Business Associate in its capacity as the Business Associate of another

covered entity, to permit data analyses that relate to the health care operations of DMH.

### **3. Responsibilities of Business Associate**

Business Associate agrees:

- A. *Nondisclosure.* Not to use or disclose Protected Health Information (PHI) other than as permitted or required by this Contract or as required by law.
- B. *Safeguards.* To implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the protected health information, including electronic PHI, that it creates, receives, maintains or transmits on behalf of DMH; and to prevent use or disclosure of PHI other than as provided for by this Contract. Business Associate shall develop and maintain a written information privacy and security program that includes administrative, technical and physical safeguards appropriate to the size and complexity of the Business Associate's operations and the nature and scope of its activities. Business Associate will provide DMH with information concerning such safeguards as DMH may reasonably request from time to time.
- C. *Mitigation of Harmful Effects.* To mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate or its subcontractors in violation of the requirements of these Provisions.
- D. *Reporting of Improper Disclosures.* To report to the DMH Privacy Officer within one business day, (916) 654-0497, of discovery by Business Associate that PHI has been used or disclosed other than as provided for by this Contract and these Provisions.
- E. *Notification of Electronic Breach.* During the term of this Contract, to notify DMH immediately upon discovery of any breach of security of PHI in computerized form if the PHI was, or is reasonably believed to have been, acquired by an unauthorized person. Notification shall be made to the DMH Privacy Officer within one business day at (916) 654-0497. Written notice shall be provided to the DMH Privacy Officer within two (2) business days of discovery. Business Associate shall take (i) prompt corrective action to cure any deficiencies and (ii) any action pertaining to such unauthorized disclosure required by applicable Federal and State laws and regulations. Business Associate shall investigate such breach and provide a written report of the investigation to the DMH Privacy Officer within thirty (30) working days of the discovery of the breach at the address below:

Privacy Officer  
C/o Office of HIPAA Compliance  
California Department of Mental Health  
1600 9<sup>th</sup> Street, Room 150  
Sacramento, CA 95814

- F. *Business Associate's Contractors.* To ensure that any contractors, including subcontractors, to whom Business Associate provides PHI received from or created or received by Business Associate on behalf of DMH, agree to the same restrictions and conditions that apply to Business Associate with respect to such PHI; and to incorporate, when applicable, the relevant provisions of these Provisions into each subcontract or subaward to such agents or subcontractors.
- G. *Amendment of PHI.* To make any amendment(s) to PHI that DMH directs or agrees to pursuant to 45 CFR Section 164.526, in the time and manner designated by DMH.
- H. *Internal Practices.* To make Business Associate's internal practices, books and records relating to the use and disclosure of PHI received from DMH, or created or received by Business Associate on behalf of DMH, available to DMH or to the Secretary of the U.S. Department of Health and Human Services in a time and manner designated by DMH or by the Secretary, for purposes of determining DMH's compliance with the HIPAA regulations.
- I. *Documentation of Disclosures.* To document and make available to DMH or (at the direction of DMH) to an Individual such disclosures of PHI, and information related to such disclosures, necessary to respond to a proper request by the subject Individual for an accounting of disclosures of PHI, in accordance with 45 CFR 164.528.
- J. *Employee Training and Discipline.* To train and use reasonable measures to ensure compliance with the requirements of these Provisions by employees who assist in the performance of functions or activities on behalf of DMH under this Contract and use or disclose PHI; and discipline such employees who intentionally violate any provisions of these Provisions, including termination of employment.

#### **4. Obligations of DMH**

DMH agrees to:

- A. *Notice of Privacy Practices.* Provide Business Associate with the Notice of Privacy Practices that DMH produces in accordance with 45 CFR 164.520, as well as any changes to such notice. The most current Notice of Privacy Practices can be viewed at: <http://www.DMH.ca.gov/hipaa>.

- B. *Permission by Individuals for Use and Disclosure of PHI.* Provide the Business Associate with any changes in, or revocation of, permission by an Individual to use or disclose PHI, if such changes affect the Business Associate's permitted or required uses and disclosures.
- C. *Notification of Restrictions.* Notify the Business Associate of any restriction to the use or disclosure of PHI that DMH has agreed to in accordance with 45 CFR 164.522, to the extent that such restriction may affect the Business Associate's use or disclosure of PHI.

## **5. Audits, Inspection and Enforcement**

From time to time, DMH may inspect the facilities, systems, books and records of Business Associate to monitor compliance with this Contract and these Provisions. Business Associate shall promptly remedy any violation of any provision of these Provisions and shall certify the same to the DMH Privacy Officer in writing. The fact that DMH inspects, or fails to inspect, or has the right to inspect, Business Associate's facilities, systems and procedures does not relieve Business Associate of its responsibility to comply with this Contract and these Provisions, nor does DMH's:

- (a) failure to detect; or
  - (b) detection, but failure to notify Business Associate, or
  - (c) require Business Associate's remediation of any unsatisfactory practices,
- constitute acceptance of such practice or a waiver of DMH's enforcement rights under this Contract and these Provisions.

## **6. Termination**

- A. *Termination for Cause.* Upon DMH's knowledge of a material breach of these Provisions by Business Associate, DMH shall either:
  - (1) Provide an opportunity for Business Associate to cure the breach or end the violation and terminate this Contract if Business Associate does not cure the breach or end the violation within the time specified by DMH; or
  - (2) Immediately terminate this Contract if Business Associate has breached a material term of these Provisions and cure is not possible.
  - (3) If neither cure nor termination is feasible, the DMH Privacy Officer shall report the violation to the Secretary of the U.S. Department of Health and Human Services.
- B. *Judicial or Administrative Proceedings.* DMH may terminate this Contract, effective immediately, if (i) Business Associate is found guilty in a criminal proceeding for a violation of the HIPAA Privacy or Security Rule or (ii) a finding or stipulation that the Business Associate has violated a privacy or security standard or requirement of HIPAA, or (iii) other security or privacy laws is made

in an administrative or civil proceeding in which the Business Associate is a party.

- C. *Effect of Termination.* Upon termination or expiration of this Contract for any reason, Business Associate shall return or destroy all PHI received from DMH (or created or received by Business Associate on behalf of DMH) that Business Associate still maintains in any form, and shall retain no copies of such PHI or, if return or destruction is not feasible, it shall continue to extend the protections of these Provisions to such information, and limit further use of such PHI to those purposes that make the return or destruction of such PHI infeasible. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate.

## **7. Miscellaneous Provisions**

- A. *Disclaimer.* DMH makes no warranty or representation that compliance by Business Associate with these Provisions, HIPAA or the HIPAA regulations will be adequate or satisfactory for Business Associate's own purposes or that any information in Business Associate's possession or control, or transmitted or received by Business Associate, is or will be secure from unauthorized use or disclosure. Business Associate is solely responsible for all decisions made by Business Associate regarding the safeguarding of PHI.
- B. *Amendment.* The parties acknowledge that Federal and State laws relating to electronic data security and privacy are rapidly evolving and that amendment of these Provisions may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the standards and requirements of HIPAA, the HIPAA regulations and other applicable laws relating to the security or privacy of PHI. Upon DMH's request, Business Associate agrees to promptly enter into negotiations with DMH concerning an amendment to these Provisions embodying written assurances consistent with the standards and requirements of HIPAA, the HIPAA regulations or other applicable laws. DMH may terminate this Contract upon thirty (30) days written notice in the event (i) Business Associate does not promptly enter into negotiations to amend these Provisions when requested by DMH pursuant to this Section or (ii) Business Associate does not enter into an amendment providing assurances regarding the safeguarding of PHI that DMH in its sole discretion, deems sufficient to satisfy the standards and requirements of HIPAA and the HIPAA regulations.
- C. *No Third-Party Beneficiaries.* Nothing express or implied in the terms and conditions of these Provisions is intended to confer, nor shall anything herein confer, upon any person other than DMH or Business Associate and their respective successors or assignees, any rights, remedies, obligations or liabilities whatsoever.



- D. *Interpretation.* The terms and conditions in these Provisions shall be interpreted as broadly as necessary to implement and comply with HIPAA, the HIPAA regulations and applicable State laws. The parties agree that any ambiguity in the terms and conditions of these Provisions shall be resolved in favor of a meaning that complies and is consistent with HIPAA and the HIPAA regulations.
- E. *Regulatory References.* A reference in the terms and conditions of these Provisions to a section in the HIPAA regulations means the section as in effect or as amended.
- F. *Survival.* The respective rights and obligations of Business Associate under Section 6.C of these Provisions shall survive the termination or expiration of this Contract.
- G. *No Waiver of Obligations.* No change, waiver or discharge of any liability or obligation hereunder on any one or more occasions shall be deemed a waiver of performance of any continuing or other obligation, or shall prohibit enforcement of any obligation, on any other occasion.